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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 663.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ET AL., *Appellees*.

Petition of the State Corporation Commission of the State of Virginia, Appellee, and the National Association of Railroad and Utilities Commissioners, Amicus Curiae, for a Rehearing.

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June 15, 1945.

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Petition of the State Corporation Commission of the State of Virginia, Appellee, and the National Association of Railroad and Utilities Commissioners, Amicus Curiae, for a Rehearing.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Come now the State Corporation Commission of the State of Virginia, appellee, and the National Association of Railroad and Utilities Commissioners, amicus curiae, and present this petition for a rehearing in the above entitled cause, and, in support thereof, respectfully show:

There are several points upon which appellee and amicus curiae believe that the decision of the Court should be reexamined, but they have limited themselves in this petition to only three, each of which is of such far reaching national

importance as to seem to justify a rehearing and reconsideration of the case. These points are (1) The question of the Commission's jurisdiction under the National Transportation Policy, (2) The question of the failure and refusal of the Commission to refer the proceeding to a properly constituted Joint Board for a hearing and recommended report and order, and (3) The question of jurisdiction over the street railway operations of the Transit Company.

At the outset we deem it desirable to emphasize that appellee and amicus curiae are primarily interested in and concerned with the jurisdictional and procedural questions as here involved, rather than with the particular fares under consideration.

While this proceeding involves only the local, intraterminal fares in a single community, the Court's rulings upon the jurisdictional and procedural questions will establish precedents which will be national in scope, and which will greatly affect the future relationship between federal and state regulatory agencies.

I.

The Court should rehear and reexamine the question of jurisdiction under the National Transportation Policy.

The question of the Commission assuming jurisdiction under the National Transportation Policy is obviously of national importance. The Commission assumed such jurisdiction by making a finding that at present the transportation in question is not adequate to meet the needs of the national defense.

At page 4 of its opinion on this point the Court says:

> "A number of witnesses testified as to the dissatisfaction of employees with the prevailing rates. If evidence was necessary to prove that unreasonably high rates were calculated to disturb the morale of workers forced to pay them, and thus to impair the national de-

fense program, there can be no doubt but that the findings of the Commission were well supported."

A War Department witness testified that the personnel turnover or rate of separation was 5.3 per cent for the entire metropolitan Washington area as compared with 4.7 per cent for the Virginia installations. (Record, page 80.)

Counsel for the War Department stipulated that an insignificant number of employees mentioned fares as a reason for leaving the service of the government in the Virginia installations. (Record, pages 614-616.)

There is no substantial evidence to support the finding of the Commission that the bus fares here involved are a cause of dissatisfaction among the employees. Even if it be assumed that the fares in question are unreasonably high, that standing alone does not give the Commission jurisdiction. It must be proved by *substantial evidence* that the high fares are retarding the war effort and in conflict with the interest of national defense. No such showing has been made on this record.

The information shown on the questionnaire, Exhibit 33, 25,000 of which were distributed to employees in the Virginia installations, is obviously more important and of more value than the oral testimony of a relatively small number of individual employees.

The opinion of the Secretaries of both War and Navy, or others, unsupported by adequate facts, may not be substituted for concrete data. *B. & O. R. Co.* v. *U. S.*, 298 U. S. 349, 379.

We respectfully urge that reconsideration be given to this point by the Court and believe that if this is done the Court will determine that the Commission was without jurisdiction under the National Transportation Policy.

II.

The Court should rehear and reexamine the question of the failure and refusal of the Commission to refer the proceeding to a properly constituted Joint Board for a hearing and recommended report and order.

The opinion of the Court makes no reference to this point, unless this important procedural question is to be deemed disposed of by the blanket statement at the end of the opinion that:

> "Other contentions urged by the carriers have been considered, but need not be discussed, since we are satisfied with the disposition made of them by the Interstate Commerce Commission."

Section 205(a) of the Interstate Commerce Act provides, *inter alia*, that the Commission *shall* refer to a Joint Board for appropriate proceedings thereon "complaints as to rates, fares, and charges of motor carriers," where such complaints involve not more than three states.

It is our contention that if the Commission did have jurisdiction over these fares then it should have referred the proceeding to a properly constituted Joint Board for a hearing and recommended report and order in compliance with the provisions of the above referred to statute.

The Commission considered this proceeding "in the nature of a complaint" even though it was termed an "investigation" in the original order. (R. 10.)

All of the transportation performed by the carriers here involved is admittedly local in character. The great preponderance of such transportation is intrastate in character. Many intricate local problems are involved in this proceeding. It must be apparent that the local authorities in Virginia and the District are peculiarly well informed respecting these local matters and the Commission should have the benefit of the opinion and knowledge of these local authorities in reaching its decision.

The opinion of this Court in *Palmer* v. *Massachusetts*, 308 U. S. 79, amply supports the view that words and meanings not clearly expressed in statutes of this character should not be read into the statute by implication where the effect is to deprive state regulatory authorities of powers which Congress intended to leave them.

The ordinary meaning of the plain language in Section 205 (a) of the Interstate Commerce Act compels the conclusion that it was the Commission's duty to refer the instant proceeding to a Joint Board for hearing and recommended report and order, assuming the Commission had jurisdiction over the operations involved.

This interpretation of the statute above referred to is strongly supported by the opinion of this Court, written by Mr. Justice Frankfurter, in *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, where at pages 617 and 618 of its opinion the Court said:

> "For the ultimate question is what has Congress commanded, when it has given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. The idea which is now sought to be read into the grant by Congress to the Administrator to define 'the area of production' beyond the plain geographic implications of that phrase is not so complicated nor is English speech so poor that words were not easily available to express the idea or at least to suggest it. After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

III.

The Court should rehear and reexamine the question of the Commission's jurisdiction over the street railway operations of the Transit Company.

This important question of law was not mentioned in the Court's opinion. It apparently was disposed of by the blanket statement at the end of the opinion, above quoted.

The Court's opinion thus summarily determines the existence of a power in the Commission never before held to exist, without even mentioning the point. The following statement does appear at page 2 of the opinion:

> "The Commission treated Transit Company's local bus and street car business as an integrated unit,"

But the Court makes no discussion of this legal point of national importance.

Congress has not placed street car operations such as those carried on by the Transit Company under the Commission's jurisdiction.

This is the first time the Commission has asserted jurisdiction over street railways under the Motor Carrier Act (or any other act). The fact is that Section 203(a) (13) of the Motor Carrier Act, defining the term "motor vehicle," expressly excludes street cars from its provisions. It even excludes trolley buses "furnishing local passenger transportation similar to street railway service."

If this theory is sustained in the present case, practically all street car systems in the country will come fully under the Commission's jurisdiction.

As Commissioner Patterson said in his dissenting opinion:

> "The action here taken by the majority will constitute a precedent for the assumption, under similar circumstances, of jurisdiction to regulate local and joint fares in connection with street railway lines serving municipalities throughout the country." (R. 855.)

Certainly Congress did not intend to give the Commission any such broad and sweeping power.

Conclusion.

For the foregoing reasons it is respectfully urged that this petition for rehearing be granted, and that the decree of the United States District Court for the District of Columbia be, upon further consideration, affirmed.

Respectfully submitted,

HENRY E. KETNER,
Attorney for State Corporation Commission of the State of Virginia, appellee,

and

FREDERICK G. HAMLEY,
Attorney for the National Association of Railroad and Utilities Commissioners, amicus curiae.

Certificate of Counsel.

We, attorneys for the State Corporation Commission of the State of Virginia, appellee, and the National Association of Railroad and Utilities Commissioners, *amicus curiae*, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith, and not for delay.

HENRY E. KETNER,
Attorney for State Corporation Commission of the State of Virginia, appellee,

and

FREDERICK G. HAMLEY,
Attorney for the National Association of Railroad and Utilities Commissioners, amicus curiae.

SUPREME COURT OF THE UNITED STATES.

No. 663.—October Term, 1944.

The United States of America and Interstate Commerce Commission, Appellants,
vs.
Capital Transit Company, Alexandria, Barcroft and Washington Transit Company, Arlington and Fairfax Motor Transportation Company, et al.

On Appeal from the District Court of the United States for the District of Columbia.

[May 28, 1945.]

Mr. Justice Black delivered the opinion of the Court.

A federal district court of three judges, one judge dissenting, set aside and permanently enjoined enforcement of an order of the Interstate Commerce Commission, 258 I. C. C. 559, on the ground that the findings were inadequate and that the Commission acted beyond its jurisdiction. 56 F. Supp. 670.[1] The case is here on direct appeal. 28 U. S. C. § 345.

At the request of the Secretaries of War and the Navy, the Interstate Commerce Commission instituted an investigation into the reasonableness of the fares of four carriers, transporting passengers by bus between points in the District of Columbia and nearby points in the State of Virginia, where are located certain military and naval offices and installments employing more than 40,000 government workers. More than half these workers live in the District so that the number of individual passenger trips to and from government work on the four motor lines is in excess of 31,000 per day. The fares of the different lines were not identical for performance of substantially the same interstate transportation, and dissatisfaction of Army and Navy employees and officials had arisen on the ground that the charges of all the companies were excessive. The Commission, after a hearing, found some existing fares to be reasonable and others unreason-

[1] The district court had previously set aside a Commission order in the same case because of inadequate findings. 55 F. Supp. 51, 256 I. C. C. 769. Thereafter the Commission heard additional evidence, made additional findings and entered the order here under review.

able. Its order required some of the rates to be reduced but permitted others to be increased.

A complicating factor arose from the distinctive type of business carried on by Capital Transit, one of the four companies transporting passengers to and from the Virginia government agencies. In addition to its District-Virginia bus service, it operated an urban and suburban transportation system, carrying passengers both by bus and streetcar. Since District terminals of all the bus companies were located in or adjacent to the central business sections, most government employees, in going to and returning from their work, were compelled to begin or complete their trips by utilizing buses or streetcars of Capital Transit. It accorded to its own bus and streetcar passengers, but denied to passengers on other Virginia buses, a privilege of transfers to and from some of its Virginia buses which lowered the total fares between District residences and their Virginia places of work. The Commission treated Transit Company's local bus and streetcar business as an integrated unit, and its findings, supported by evidence, show that its ~~inter~~ intra-company transfer practices were the equivalent of establishment by Transit of through interstate routes with joint rates to and from District residences to the Virginia points. Accordingly it ordered that analogous joint arrangements as to fares, including transfer privileges, be established between Transit and the other bus lines carrying passengers to and from Virginia government agencies. This, and other elements of the Commission order not passed on by the district court, were separately attacked here. In order that final disposition of the case may not be further delayed, we shall consider all questions argued before us.

First. It is argued that the Commission is without jurisdiction to regulate any of the District-Virginia transportation here involved. The argument emphasizes that the movement begins and ends in a single "community", all within an area which the Commission has previously recognized as the "commercial zone" of Washington. 3 M. C. C. 243. We are referred here to the holding of this Court in 1912 that a street-railway, carrying passengers between Omaha, Nebraska and Council Bluffs, Iowa, was "local", serving the use of a "single community", and was not the kind of "railroad" which the Interstate Commerce Act empowered the Commission to regulate. *Omaha Street Ry.* v. *United States*, 230 U. S. 234. Cf. *United States* v. *Village of*

Hubbard, 266 U. S. 474, 479-480. The same principle, we are told, should exclude similar local bus operations. But this Court's decision in the *Omaha* case did not hold that Congress could not authorize the Commission to regulate movements that took place across state lines in a single local community. The power of Congress over such movements cannot be doubted. The *Omaha* case only decided that Congress had not granted such power to the Commission under the law as it then existed.

We must now test the Commission's power in this case by the provisions of a statute enacted subsequent to the *Omaha Street Ry.* case, *supra*, the Motor Carrier Act, 49 Stat. 543, under which the order here was entered. Section 203(b) of that Act provides the controlling rule. It specifically defines the circumstances under which the Commission can regulate interstate activities which happen to take place in a single "commercial zone."

That Section, to a limited extent, excludes from the Commission's jurisdiction "The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities . . . ." Other parts of the same Section authorize the Commission to apply the Act to these zone activities, however, if it finds that (1) "such application is necessary" to carry out the national transportation policy declared in the Act, or (2) if the carrier is not "engaged in . . . intrastate transportation of passengers over the entire length of such interstate route." The Commission held that the four bus companies came within both these exceptions and therefore were not excluded from its jurisdiction. We need not consider whether they came within the second exception, because of our conclusion that the Commission's findings justified its order under the first exception. Those findings were that it was necessary for the Commission to exercise its jurisdiction in order to carry out the Act's declared policy, "to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, . . . to the end of developing, coordinating, and preserving a national transportation system . . . adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense." 54 Stat. 899.

On its second hearing the Commission heard evidence from employees of the Army and Navy as to dissatisfaction with the fares. The Secretaries of both War and Navy made complaints

concerning the situation produced by the rate structure. A number of witnesses testified as to the dissatisfaction of employees with the prevailing rates. If evidence was necessary to prove that unreasonably high rates were calculated to disturb the morale of workers forced to pay them, and thus to impair the national defense program, there can be no doubt but that the findings of the Commission were well supported. It is to be remembered that these were interstate rates for interstate travel which applied almost exclusively to workers engaged in national defense. Neither the District nor Virginia had power adequately to regulate the rates; nor had they attempted to do so. Their regulation was rightfully a matter of concern to Army and Navy Departments charged with the serious responsibility of conducting a war. The employees worked in the very center of activities essential in that cause. Congress unequivocally reserved to the Commission power to regulate reasonableness of interstate rates in the light of the needs of national defense. The findings of the Commission on this issue were clear and complete, cf. *Yonkers* v. *United States*, 320 U. S. 685, and justified the Commission in exercising its jurisdiction.

Second. It is argued that the Commission exceeded its authority in prescribing joint fares between the Capital Transit Company and the other bus companies. This contention rests on two assumptions grounded upon the difference in the way the parties view the facts and the law governing them. The first argument of the companies is substantially the same as the one just rejected—that all of the Transit Company's operations, by both bus and streetcar, are purely local and therefore not subject to the Commission's jurisdiction. The second contention is this: Sections 216(c) and (e) permit but do not require motor carriers to establish through routes and joint rates with other types of carriers; since the companies view the facts as failing to show that through routes or joint rates have voluntarily been established as to Transit's streetcars and the Virginia buses, they argue that the Commission cannot require their establishment. The Commission found, however, that Transit had voluntarily established through routes, and contends its finding has support in the evidence and consequently sustains its order. It also relies on its power under Section 216(e) to prescribe through rates for all segments of an interstate transportation carried on between motor carriers. This power it argues is broad enough to auth-

orize an order for joint rates for interstate carriage conducted by a company which, as it found this one did, uses streetcars and buses as an integrated unit in carrying out interstate transportation. We think that under the facts and circumstances shown the Commission's findings are not subject to attack and that it acted within its statutory authority in prescribing the through rates.

As previously pointed out, twice a day more than 15,000 government employees traveled between the Virginia agencies and their homes via one of the four bus systems. Most of them either went to or from these bus terminals from or to their homes over any of Transit's then available buses or streetcars. Their travel was at certain hours each day, at which special rush hour, buses and cars were made available for their carriage. Their interstate journey to work actually began at the time they boarded a Transit bus or streetcar near their home, and actually ended when they alighted from the Virginia going bus at their place of work. On returning from work their interstate journey actually began when they boarded a bus near their work and actually ended when they alighted from a Transit streetcar or bus near their home. True, their interstate trip was broken at the District terminii of the Virginia buses, when they stepped from one vehicle to another. But in the commonly accepted sense of the transportation concept, their entire trip was interstate. *B. & O. S. W. R. R. Co.* v. *Settle*, 260 U. S. 166. And the fact that, except as to Transit, they paid a combination of two rates, one for travel wholly within the District, and the other for travel between the District and Virginia, and the journey from their residences to Virginia and back again was taken in two segments, does not mean that the total interstate trip was not on a "through route." *Virginian Ry.* v. *United States*, 272 U. S. 658, 666-667; *St. Louis S. W. Ry. Co.* v. *United States*, 245 U. S. 136, 139-140.

Moreover, Transit Company itself conducted its own traffic to and from Virginia and District residential points as one continuous journey. As previously noted, a Virginia worker could board its local bus or streetcar, ride to a District terminal of Transit's Virginia bound bus, board it, and obtain the benefit of a transfer supplied by Transit. So also could Transit's passenger get the benefit of a transfer on the return journey home from work. Had Transit not owned the separate vehicles used in the

transportation, these arrangements would have constituted "joint rates" for a "through route" within the statutory meaning of the term. As carried out by Transit the arrangements were the exact equivalent of transportation on a "through route" for a joint fare. Had Transit not owned the vehicles transporting the passengers on each leg of this interstate journey, it could not have established consistently within the Interstate Commerce Act, joint rates with a particular Virginia bus line, to the exclusion of its competitors, for the reason that one given a monopoly of through traffic could "soon be able to drive its competitors out of business." *United States et al.* v. *Pa. Railroad, et al.*, No. 47-48, decided January 29, 1945, slip opinion, pp. 4-5. The Motor Carrier Act, which is part of the Interstate Commerce Act, need not be interpreted so as to permit the accomplishment of such a result.

Section 216(e) expressly authorizes the Commission to declare unlawful any unreasonable, preferential, or prejudicial rule, classification, regulation or practice arising from any "individual or joint rate, fare, or charge, demanded, charged or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carriers by railroad . . ." and to "prescribe the lawful rate, fare, or charge . . . thereafter to be observed. . . ." We think that under the Commission's findings, supported by evidence, it did have power to declare these rates unreasonable and unlawful as it did, and thereafter to prescribe the lawful rate to be charged for the interstate trip. This did not, as argued, constitute a regulation of intrastate commerce.

Other contentions urged by the carriers have been considered, but need not be discussed, since we are satisfied with the disposition made of them by the Interstate Commerce Commission. Finding no error in the order of the Commission, the judgment of the district court declining to enforce it is

Reversed.

Mr. Justice ROBERTS is of the opinion that the Commission had no jurisdiction of the fares in question, for the reasons set forth in the opinions below, 55 F. Supp. 51, and 56 F. Supp. 670. Mr. Justice REED and Mr. Justice DOUGLAS dissent from part Second of the opinion.